IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 294 of 2006
with
CIVIL APPLICATION NO.11934 OF 2006
WITH
CIVIL APPLICATION NO.11938 OF 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

REKHABEN CHATURBHAI PATEL AND OTHERS
Versus
KARANJI BHAVANJI VAGHELA AND OTHERS

==========

Appearance :
Ms Trusha K Patel for the Appellants
Mr BG Jani for the Respondents

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 19/03/2007

ORAL JUDGMENT:

The appellants gin are the original defendants against whom the respondents herein have filed suit being Special Civil Suit No.8 of 2006. The aforesaid suit was filed by the mother of the present respondents, Amthuba Bhavanji through her Power of Attorney Holder but she having died during the pendency of the suit her heirs i.e., present respondents herein were brought on record. In the aforesaid suit the plaintiff has prayed that the plaintiff has got one-fourths share in the amount of Rs.39,64,696/-, which was deposited by the Government towards the compensation of the land that was acquired by the Government under the Land Acquisition Act. The plaintiff has also prayed for permanent injunction restraining the defendants from withdrawing the aforesaid amount. As per the case of the said plaintiff, the disputed land originally belonged to one Becharji Mulji. Said Becharji Mulji had four sons and the plaintiff is the daughter of one of the sons of Becharji Mulji, namely, Dungarji Becharji and that is how she has got one-fourths share in the suit land being daughter of deceased Dungarji Becharji and that is how she has claimed one-fourths share in the compensation amount in connection with the land which is acquired by the Government under Land Acquisition Act. The said suit is resisted by the defendants on various grounds. It is the case of the defendants that the plaintiff has got no right, title or interest in the said property. That the said suit is filed only for the purpose of blackmailing the defendants as the plaintiff has never objected to the same when the award was declared or even when the reference under Section 18 of the Land Acquisition Act was made. It is also the case of the defendants that the plaintiff had never objected before the Collector at any point of time. On this and such other grounds the suit is resisted by defendants Nos.1 to 7. The original defendants Nos.8 to 12 have also resisted the said suit. It is the say of the said defendants that they are bona fide purchasers of the land before the land was subjected to land acquisition proceedings and that the plaintiff has

no case worth the name for any interim relief.

The learned trial Judge after hearing both the sides granted interim injunction restraiing the defendants from withdrawing one-fourths amount of the compensation. So far as three-fourths amount is concerned, the defendants were permitted to withdraw the said amount deposited as per the order passed in Land Reference Case No.338 of 1998. The learned trial Judge also directed that the said amount may be deposited in the Civil Court and thereafter the same may be deposited in a nationalised bank for a period of one year and to renew the same periodically in case the suit is not decided. It is the aforesaid order which is impugned at the instance of the original defendants.

Ms Trusha K Patel, learned advocate for the appellant submitted that the plaintiff has no right, title or interest over the amount in question as the property was subjected to partition many many years ago and at that time the plaintiff's father did not object to the same. He also did not object to the revenue entry or proceedings when the name of ancestors of the defendants Nos.1 to 7 was entered into revenue record. It is submitted by her that deceased Dungarji i.e., the plaintiff's father has got his own properties which is in his occupation and therefore the plaintiff has no right, title or interest in the amount in question as the land belongs to ancestors of defendants Nos.1 to 7 and the same was acquired by the Government and the compensation amount is deposited in the Court. Ms Patel further submitted that for all these years the plaintiff's father had never objected to nor the plaintiff had made any grievance before the Collector at the time when the amount was deposited under the Land Acquisition Act nor any proceedings were taken up as contemplated under Section 30 of the Land Acquisition Act

nor any grievance was made at the time when the reference was made at the instance of the defendants under Section 18 of the Land Acquisition Act.

Mr Jani, on the other hand, submitted that the trial Court has passed just and equitable order and interest of the defendants is also taken care as the amount in question is directed to be deposited in a nationalised bank and the plaintiff is not permitted to withdraw the said amount. He submitted that the plaintiff has got one-fourths share in the compensation amount as she has share in the disputed land which was acquired by the State Government.

I have heard learned advocates appearing for the parties. It is required to be noted that the arguments which are submitted by both the sides are either not canvassed before the Court or that the trial Court has not considered the said aspect as to whether the land in question which was acquired by the Government and for which compensation amount is now deposited was joint family property or whether it had come to the share of the defendants. The learned trial Judge has also not considered as to whether the plaintiff has made out prima facie case by which it can be said that the plaintiff has got one-fourths share in the suit property. The learned Judge has also not considered the effect of revenue entries. The learned trial Judge has relied upon the decision of the learned Single Judge of this Court in Appeal from Order No.326 of 2005 decided on 26.12.2005. However, this Court in the said judgment has not laid down any principles of law that when a partition suit is filed, interim relief must be granted. In the said case, the order was passed with the consent of the other side. Here, in this case, the appellants are not giving consent for depositing the amount. The trial Court is now required to decide the question of prima facie case for granting interim injunction. It

is true, as argued by Mr Jani, that if the amount is allowed to be remained in the fixed deposit it may not prejudice the other side. However, in my view, when the parties are asserting their rights the Court is required to consider the principal question whether there is any prima facie case in favour of the plaintiff for getting the injunction. The learned trial Judge merely on the basis of the order passed by this Court in Appeal from Order No.326 of 2005 has granted this injunction without considering the aspects involved in the matter. The learned Judge has also not considered the documentary evidence produced on record and relied upon by the parties. It would, therefore, be just and proper to remand the matter back to the trial Court for considering the application Exhibit 6 by finding out whether the plaintiff is able to prove prima facie case regarding having one-fourths undivided share in the property. The learned trial Judge may also consider all relevant aspects of the matter and give positive finding on these points. The matter is therefore sent back to the trial Court for taking a fresh decision in the light of what is stated above. The learned trial Judge while deciding the matter afresh may not be influenced by the observations made by this Court or the observations made in the earlier order by the learned trial Judge and decide the application on its own merits de novo. However, till the learned trial Judge decides the application Exhibit 6 the amount in question shall continue to remain in the Fixed Deposit and ultimately the same shall be subject to the order of the learned trial Judge on Exhibit 6. The learned trial Judge may decide the application latest by 30th July 2007. Writ to be sent to the trial Court forthwith.

Subject to the aforesaid observations and directions, the appeal is partly allowed with no order as to costs.

In view of the disposal of the main matter, no order is required to be passed on Civil Application Nos.11934 of 2006 and 11938 of 2006

and the same are disposed of accordingly.

(P.B.MAJMUDAR, J.)

*mohd